

# **REQUEST FOR PROPOSAL**

## **Utility Locating Service**

### **COUNTY OF FRESNO**

**Fresno, California**

**SUBMITTAL:** Six (6) copies must be received on or before:  
**Wednesday, May 2, 2001, 5:00 p.m.**

**Addressed to:** Stuart G. Seiden, Capital Projects Division Manager

**Mailing Address:** Department of Public Works  
2220 Tulare Street, Suite 600  
Fresno, CA 93721

**Office Address:** Fresno County Plaza  
2220 Tulare Street, Suite 720  
Fresno, CA 93721

**Mark Envelope:** "PROPOSAL – Utility Locating Service"

PROPOSALS RECEIVED AFTER THE TIME AND DATE STATED ABOVE SHALL BE RETURNED UNOPENED TO THE PROPOSER.
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**INQUIRIES:**

Direct questions or clarifications of the Request For Proposal (RFP) documents to Claude D. Dechow, Senior Architect, at (559) 262-4214, or fax (559) 262-4879, Capital Projects Division, Department of Public Works.

**CONSULTANT SELECTION POLICY:**

Copies of the Fresno County Board of Supervisors Resolution 90-028 (Ordinance Code Chapter 4.10) which establishes procedures that implement the selection of Architects, Engineers, and other Professionals, may be obtained from Junso Ogawa, Staff Analyst (559) 262-4386, Capital Projects Division, Department of Public Works.

Issuance Date: April 4, 2001

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**EXHIBITS**

EXHIBIT 1    SAMPLE PROJECTS

EXHIBIT 2    DRAFT CONSULTANT SERVICES AGREEMENT

**REQUEST FOR PROPOSAL - CONSULTANT SERVICES****UTILITY LOCATING SERVICES****VARIOUS FRESNO COUNTY CAPITAL IMPROVEMENT PROJECTS****I. SUMMARY**

Fresno County desires to retain, by Consultant Services Agreement, utility locating firms to assist the Capital Projects Division of the Department of Public Works in completing various projects in the County and assist in advance planning for future projects. The term of the agreement will be for three years; see RFP Article II for additional information regarding the agreement.

A list of sample projects for which consultant professional services may be required is attached as Exhibit 1; the list may be revised as a result of Board of Supervisors reprioritization of project deliveries for the Department of Public Works delivery program.

The County is interested in firms having specialty experience in subject areas listed in Exhibit 1. Please indicate in the response the specialty(ies) for which the firm wishes to be considered. More than one firm for each specialty may be selected.

Interested utility locating consultants are invited to submit proposals in response to this RFP. Requests for proposals for other consultant services disciplines may also be issued concurrently.

**II. DRAFT AGREEMENT**

The attached Draft Agreement that will be modified as appropriate for the utility locating service and development of sample projects described in Exhibit 1. The Draft Agreement includes standard provisions from the most recent consultant services agreements. Compensation under the agreement will be billed at hour rates as identified in the agreement, with an agreed maximum fee for each project and phase.

Hourly rates are to include transportation and travel, postage and courier services, photo and duplicating services, telephone and facsimile charges, computer storage media, drawing and plotting media, plotter time and cost, printing of "check print" plans, and documents required by Agreement.

The term of the agreement will be for three years; the first two years of the term will be for the performance of professional services for the projects shown in agreement Exhibit 2 (or as revised to meet County needs); the third year of the term will be to cover the construction period of the later projects.

To mitigate construction claims, the County may wish to discuss additional related issues dealing with Contractor Construction Claims cost avoidance with the finalist firms. The discussions will be frank and open to acceptable alternatives that will limit the County's exposure to costs caused by construction contract claims, construction contractor extended overhead costs and claims processing costs which have become a significant project cost consideration for the County.

RFP / Agreement Schedule:

<u>Event</u>	<u>Duration</u>
Issuance of RFP, Submittal	April 4, Deadline May 2, 2001
Selection of Consultant	May 15, 2001
Submit to Board of Supervisors for Approval	May 22, 2001
Agreement Executed	June 19, 2001

**III. SERVICES OF THE CONSULTANT**

The services required of the Consultant shall generally be the services described in the Draft Agreement, Article III.

**IV. SERVICES BY THE COUNTY**

The services to be provided by the County shall generally include the services described in the Draft Agreement, Article IV.

**V. BACKGROUND CHECK**

The County reserves the right to conduct a background inquiry of each proposer which may include collection of appropriate criminal history information, contractual and business associations, business practices, employment histories, and reputation in the business community. By submitting a proposal to the County, the proposer consents to such an inquiry and agrees to make available to the County such books and records the County deems necessary to conduct the inquiry.

**VI. PROPOSAL SUBMITTAL REQUIREMENTS**

Submit no more information than requested of this Request for Proposal. The completeness of the response to the RFP will be evaluated by a screening committee.

You must answer the following questions in the same sequence as below.

1. Firm name, address, phone and fax numbers, e-mail address and website, if applicable.
2. Specify type of organization (individual, partnership or corporation) and if applicable indicate whether you are:
  - a. Small Business.
  - b. Disadvantaged Business.
  - c. Minority and/or Women Owned Business.
3. Firm principals who will be responsible for the projects, and their education, credentials and experience.
4. Key personnel who will be assigned to work on the projects, and their education, credentials and experience.
5. Not applicable
6. Present staff - number and classification.
7. List current projects or commitments for consulting services in your office.
8. List projects completed or under construction in reverse chronological order for the last four years for each specialty for which your firm provided design services:

Indicate for each of these projects:

- (a) Name of project
- (b) Project location
- (c) Brief description (type of construction, functional components, special design considerations)
- (d) Description of projects
- (e) Name of owner
- (f) Name of owner's contact person and telephone number (Contact person, who, at the time of RFP submittal, will be employed by the owner)
- (g) Your firm's specific involvement (i.e., prime architect or engineer, architect or engineer of record, subconsultant)
- (h) The bid cost vs. cost estimate

- (i) Status of completion
- 9. List at least four additional references of present or past clients with their telephone numbers.
- 10. Include a current copy of Standard Form 254 "Architect-Engineer and Related Services Questionnaire".
- 11. The Consultant will submit as a part of his or her initial submittal the firms' current basic hourly rate schedule for all current employee classifications. Such hourly labor rates shall include costs for items such as office supplies, printing, postage, vehicle costs, and other incidentals. Include the same information for all proposed subconsultants.**

## **VII. CONSULTANT SELECTION PROCEDURE**

The selection procedure shall be in accordance with Fresno County Ordinance 90-028 and applicable provisions of the "Policy for Selection and Compensation of Architectural / Engineering Consultants" as revised by the Board of Supervisors on November 29, 1994. The process includes the following provisions:

A project Selection Committee will be formed to evaluate the proposals and to make recommendations to the Fresno County Board of Supervisors. This Committee may consist of representatives of the General Services Department, Department of Public Works, County Administrative Office, and may include a representative knowledgeable in utility locating from outside the community or from one of the universities.

The Committee will screen the proposals and may select three or more finalists. More than five firms will be considered as finalists when, in the judgment of the Committee, other firms are equally qualified to provide the requested professional services. Finalists may be requested to interview with the Committee as a part of the Committee's evaluation process. The County may enter into contracts with more than one firm.

The Committee will address the following criteria in its evaluation of proposals (not necessarily in order of importance).

- A. Experience with emphasis on projects for federal, state, or local governmental projects.
- B. Educational background of the consultant's key individuals who will be assigned to the projects.

- C. Quality of past performance for the County and other governmental agencies.
- D. Qualifications of individual within the Consultant's organization directly responsible for the work. The County reserves the right of approval of the Consultant's project manager.
- E. Adequacy of staff to perform the work.
- F. (not applicable).
- G. Demonstrated ability to make effective public presentations.
- H. Demonstrated ability to work effectively with County staff, other public agencies and related parties.
- I. (not applicable).
- J. Demonstrated ability to keep costs contained and within project budgets.
- K. Knowledge of local conditions.
- L. Demonstrated interest of the consultant in the success, efficiency, and workability of the facility during construction and post construction operation.
- M. Whether the consultant is currently engaged in another project which has direct and substantial physical relationship to the proposed projects.
- N. Whether the consultant who designed the original facility should be retained for the new work on the basis of cost, detailed knowledge of the existing facility, or necessity of use of the same design concept in the proposed work.
- O. Demonstrated record of abiding by terms of subcontract agreements regarding timely payment for services rendered on County projects.
- P. Ability of the consultant to furnish effective and timely construction observation services.
- Q. Completeness of proposal.
- R. The estimated fee proposal (hourly rates) will be a factor in the final selection only after the most qualified firms have been identified.
- S. Local (within Fresno County) consultants are preferred over non-local

consultants.

T. (not applicable)

**The Consultant selection is anticipated to occur by April 24, 2001 and with Board of Supervisors approval of selection by May 22, 2001.**

The Consultant selected will be expected to start work as soon as the Board of Supervisors approves the consultant agreement.

The anticipated agreement execution date is June 26, 2001.

### **VIII. FEE DETERMINATION**

The draft form of agreement includes a maximum total fee for basic services and extra services. Total fees paid to the consultant will be dependent on the professional services performed for the projects developed under the Capital Improvement Program. No guarantee is made that any fee will be received by the Consultant.

### **IX. SITE VISITATION**

Site visitations are not scheduled for this RFP.

**Exhibit 1 – Sample Projects**

Locating and documenting of existing utilities on and around various County properties, such as:

- Water
- Sewer
- Gas
- Electric
- Electronic
- Telephone
- Data
- Metallic and Non-Metallic Infrastructure

Documentation, when required, shall be provided as scaled drawing in AutoCAD format dimensioned to permanent structures. Data shall be provided in hard copy and electronic formats.

**AGREEMENT FOR [type] CONSULTANT SERVICES**

THIS AGREEMENT is made and entered into this \_\_\_\_\_ day  
of \_\_\_\_\_, 20\_\_, between the County of Fresno, a political  
subdivision of the State of California, (hereinafter called  
"COUNTY"), and  
**[Consultant's firm name]** \_\_\_\_\_, Architect  
/ Engineer, (A [State] Corporation / Partnership),  
**[Individual's name]** \_\_\_\_\_ a sole proprietor doing  
business as **[Firm name]**,  
**[address]** \_\_\_\_\_, (hereinafter called  
"CONSULTANT").

**W I T N E S S E T H:**

WHEREAS, the COUNTY desires to retain a CONSULTANT  
[discipline] engineer to assist the COUNTY in completing various  
projects in the COUNTY's Capital Improvement Program advance  
planning for future Capital Improvement Program projects; and

WHEREAS, in accordance with COUNTY Ordinance Code Chapter 4.10  
governing the selection of architects, engineers, and other  
professionals, a selection committee chose said CONSULTANT to  
assist the COUNTY by preparing engineering plans, specifications,  
and opinion of probable construction cost of all or some components  
of current and future engineering projects, (herein referred to as  
engineering services) for the various projects; and

WHEREAS, the \_\_\_\_\_ COUNTY will be the Engineer of  
Record for all the projects' plans and specifications, which will  
include the CONSULTANT's technical plans, specifications, opinion  
of probable construction cost, and required reports; and

WHEREAS, COUNTY has been designated as the sponsoring agency  
to administer and implement the program for the Federal Department  
of Housing and Urban Development (HUD) Community Development Block  
Grant (CDBG) activities of the COUNTY, excluding the City of  
Fresno, in accordance with the provisions of Title I of the Housing

1 and Community Development Act of 1974, as amended, and the laws of  
2 the State of California; and

3 WHEREAS, HUD/CDBG funding has been made available to COUNTY  
4 for architectural and engineering activities; and

5 WHEREAS, said CONSULTANT represents that it is qualified and  
6 willing to perform the *engineering* services required by the COUNTY  
7 for these projects.

8 NOW, THEREFORE, the parties hereto have and by these presents  
9 do agree as follows:

10 I. CONTRACTING WITH CONSULTANT: BASIC PARAMETERS

11 A. The CONSULTANT shall retain other subconsultants as  
12 CONSULTANT requires to assist in completing the work. All  
13 subconsultants used by CONSULTANT shall be approved by the COUNTY  
14 before they are retained by the CONSULTANT, which approval shall  
15 not be unreasonably withheld. Subconsultants listed in Exhibit  
16 \_\_\_\_, attached hereto and incorporated herein, shall be considered  
17 as approved by the COUNTY. Should CONSULTANT retain any  
18 subconsultants, compensation to be paid to CONSULTANT under Article  
19 V below, shall not be increased.

20 B. The CONSULTANT's services shall be performed as  
21 expeditiously as is consistent with professional skill and the  
22 orderly progress of the work, based on project schedules prepared  
23 by the COUNTY.

24 C. The CONSULTANT and affiliated subconsultants shall not  
25 submit bids, or subbids, for the contract construction phase of any  
26 project for which CONSULTANT provides services hereunder. The  
27 CONSULTANT and its subconsultants, and all other service providers,  
28 shall not provide any project-related services for, or receive any  
project-related compensation from any construction contractor,  
subcontractor or service provider awarded a construction contract  
for all or any portion of *any project* for which CONSULTANT provides  
services hereunder. The CONSULTANT and its subconsultants, and all  
other service providers, may provide services for, and receive

1 compensation from a construction contractor, subcontractor or  
2 service provider who has been awarded a construction contract for  
3 all or any portion of the project, provided that any such services  
4 which are rendered, and any compensation which is received therefor  
relates to work outside the scope of this Agreement.

5 D. The contact person(s) for the CONSULTANT shall be:

6 \_\_\_\_\_ telephone \_\_\_\_\_, fax \_\_\_\_\_, email, \_\_\_\_\_, web \_\_\_\_\_.

7 II. DESCRIPTION OF THE WORK COVERED BY THIS AGREEMENT:

8 A. The work covered by this Agreement is all the CONSULTANT  
9 engineering services under Article III needed to provide  
10 engineering plans to the COUNTY for the various COUNTY projects  
11 being designed and administered by the COUNTY. The COUNTY shall  
12 incorporate the CONSULTANT'S engineering design plans and  
13 specifications into the construction documents for each of the  
14 various projects.

15 B. The anticipated various projects are identified in Exhibit  
16 \_\_, attached hereto and incorporated herein. However, other  
17 projects may be substituted for such projects by COUNTY if COUNTY'S  
18 priorities or schedules require changing.

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111. CONSULTANT'S SERVICES:

The CONSULTANT agrees to provide the professional services that are necessary to perform the following phases for each project.

- A. Programming
- B. Preliminary Design
- C. Construction Documents
- D. Construction

[Not to RFP respondents: Services to be provided under each phase will be described in a Draft Agreement forwarded to finalists. The Draft Agreement will be detailed for the engineering specialties described in RFP Exhibit 1, as addressed by the finalists.]

111. CONSULTANT'S SERVICES:

The CONSULTANT agrees to provide the professional services that are necessary to perform the following phases for each project when expressly authorized in writing by the COUNTY.

A. Phase 1, Preliminary Design:

The CONSULTANT shall: [*, for each project:*]

1. Ascertain the requirements for each project through a meeting with the COUNTY and a review of an existing schematic layout of each project.

2. In a project review meeting with the COUNTY demonstrate with sketches and fixture cuts, or otherwise orally describe, the preliminary design of each system and other elements of each project not illustrated in the preliminary design drawings, but required for a complete and functional project. CONSULTANT must monitor and keep COUNTY informed regarding the impact of design issues on each project budget. Upon the written request of the COUNTY, CONSULTANT shall incorporate into each project design such reasonable design and operational changes as the COUNTY deems appropriate as a result of the COUNTY's review processes and impact on each project budget or opinion of probable construction cost.

1 If CONSULTANT disagrees with the COUNTY's request, such  
2 disagreement must be registered in writing, and the COUNTY will  
3 attempt to reconcile such disagreement. If it is impossible to  
4 make a reconciliation, the written disagreement will become part of  
5 each project's record. However, CONSULTANT shall then comply with  
6 the COUNTY request.

7 3. Not proceed with the next Phase unless expressly  
8 authorized by the COUNTY in writing.

9 C. Phase 3, Construction Documents: [*Phase 2 less complex*]

10 The CONSULTANT shall: [*, for each project:*]

11 1. Prepare the final working drawings from the design  
12 development (preliminary design), as modified by the COUNTY, on 24"  
13 by 36" sheets, or other size approved by COUNTY, and technical  
14 specifications on 8-1/2" by 11" pages setting forth in detail the  
15 work to be done, the materials, workmanship, finishes, and  
16 equipment required for the architectural, structural, mechanical,  
17 electrical, communications, and other components of construction  
18 necessary to provide the COUNTY a complete and functional project  
19 for its intended purpose within the requirements of this Agreement.  
20 (The COUNTY will provide the [*format of the*] COUNTY's standard plan  
21 title sheet.)

22 2. Monitor and keep COUNTY informed regarding the impact  
23 of design issues on the project budget. Upon the request of the  
24 COUNTY, CONSULTANT shall incorporate into the design such  
25 reasonable changes as the COUNTY deems appropriate as a result of  
26 the COUNTY'S review processes and impact on the project budget or  
27 opinion of probable construction cost.

28 3. Review, comment, and/or make recommendations on the  
form and content of the COUNTY's General Conditions, Special  
Conditions, and Bid Form as they apply towards the project.

4. In addition to the technical specifications, prepare  
special or supplemental conditions for the construction contract.

The COUNTY will package the CONSULTANT's documents with the

COUNTY's approved General Conditions, Notice to Contractors calling for bids, the Bid Form, and related documents to complete the construction contract and bid specifications. *[Specifications for asbestos and lead-based paint abatement shall be incorporated by the COUNTY into the bid package.]*

5. Submit to the COUNTY [an independently verified] projected and final opinion of probable construction cost *[in the CSI/UCI 16 division format]* for the base bid work and alternate bid items. The opinion of probable construction cost shall be projected to the midpoint of the scheduled construction period to be scheduled by the COUNTY. Differences between the design development (preliminary) and final opinion of probable construction cost shall be explained in writing.

6. Submit the construction period for bidding purposes to the COUNTY for approval and identify long delivery times of materials and equipment which will affect length of construction contract.

*[Various projects]*

6. Verify the reasonableness of the estimated construction period for construction contract bidding purposes as provided by the COUNTY and identify long delivery times of materials and equipment which may affect the length of construction contract.

7. Include alternate bid items (preferably additive), not as separate design drawings but incorporated into the original construction drawings, to allow construction element choices or cost options by the COUNTY. The basis of award may be on the base bid only, or base bid plus additive alternates. Additive bid items may be necessary so that the COUNTY will be able to award a construction contract not exceeding available construction funds.

8. If required for the construction of this project, propose and submit a recommended testing and inspection list for materials identifying type, quantity, frequency, schedule, and cost

estimate of tests to be performed by an independent testing firm during construction.

[ County usually prints from consultant originals ]

9. Submit progress originals and final originals of the plans, specifications, and opinion of probable construction cost for reproduction by the COUNTY. Submit four copies of structural calculations.

[ if consultant is to provide review plans etc ]

9. Submit ten (10) copies of the plans, specifications, and opinion of probable construction cost to the COUNTY for approval seven (7) days in advance of the final design presentation.

[ can combine with above ]

10. Submit four (4) additional copies of the plans and specifications to the COUNTY for transmittal to [OSHPD, CSFM,] and applicable plan check agency for building, [seismic, and health] code compliance and approval.

[ other required info ]

10. If required by approval agencies, such as the Office of Statewide Health Planning (OSHPD) and the California State Fire Marshal (CSFM), for the construction of each project, submit to the COUNTY in the appropriate agency forms, project background information and recommended testing and inspection list for materials to be used for each project identifying the type, quantity, frequency, and schedule of such inspections.

11. Modify plans as required to obtain plan check approval. The OSHPD building permit form shall be completed by the COUNTY, as assisted by the CONSULTANT.

12. Not proceed with the next Phase unless expressly authorized in writing by COUNTY.

D. Phase 4, Bidding and Award:

The CONSULTANT shall: [ , for each project:]

1           1. Deliver to the COUNTY two (2) weeks prior to the  
2 advertising date (which date will be determined by COUNTY), the  
3 final completed original drawings and specifications for COUNTY  
4 printing and distribution of bid sets to interested contractors.  
5 The original drawings and specifications index sheet shall be  
6 stamped by a seal with CONSULTANT and subconsultants' license  
7 numbers and/or signed in accordance with the California Business  
8 and Professions Code.

9           2. Submit a list of general and specialty contractors who  
10 may be interested in bidding on this project.

11           3. Attend the pre-bid conference scheduled by the COUNTY.

12           *[ from new bldg ]*

13           4. Prepare addendum drawings and other documents as  
14 required to clarify scope of work to be bid upon, at no additional  
15 cost to the COUNTY. Coordinate subconsultants' addendum drawings  
16 and documents.

17           5. Prepare drawings and work necessary to delineate  
18 either the COUNTY's changes in scope to the contract or changes in  
19 job-site conditions due to inaccurate information provided by the  
20 COUNTY. Such work shall be provided as directed by the COUNTY  
21 representative and shall be an Extra Service to the CONSULTANT's  
22 agreement.

23           5. Submit to the COUNTY for review and approval any  
24 addenda deemed necessary. Addenda, if any, shall be submitted no  
25 later than ten (10) working days prior to the scheduled bid  
26 opening. The addendum shall be distributed by the COUNTY. An  
27 electronic copy of addenda items shall be furnished to the COUNTY.  
28 No addendum will be issued in the 72 hour period prior to bid  
opening.

          6. Assist the COUNTY in evaluating the base bids and  
alternate bid items received.

          7. Delete or otherwise change portions of the  
construction work at the request of the COUNTY if the lowest bid

proposal for the proposed construction contract exceeds the COUNTY approved opinion of probable construction cost (which will include the CONSULTANT's design contingency amount approved by the COUNTY) by 10% or more, and if the COUNTY rejects all bids. In such event, the CONSULTANT shall revise the plans and specifications to comply with such modifications and also shall assist the COUNTY in obtaining new proposals from contractors, all at no additional cost to the COUNTY. Such modifications shall be completed on a time schedule commensurate with the scope of the change and as set forth by the COUNTY.

[ alt, various project ]

7. If the date for submittal of bids for the construction contract occurs within 120 days after COUNTY's acceptance of CONSULTANT's construction drawings, specifications and opinion of probable construction cost, and if the lowest bid exceeds by 10% or more the CONSULTANT's opinion of probable construction cost (which will include the CONSULTANT's design contingency amount approved by the COUNTY) as accepted by COUNTY within such preceding 120-day period, and if the COUNTY's Board of Supervisors thereafter rejects all bids, then the CONSULTANT shall make revisions and modifications to the plans and specifications as necessary to coincide and achieve consistency with such previously accepted opinion of probable construction cost (in light of the amounts of the bids previously submitted), and shall assist the COUNTY in obtaining new proposals from contractors, all at no additional cost to the COUNTY. Such revisions and modifications shall be completed on a time schedule commensurate with the scope of the change and as set forth by the COUNTY. In the event that the COUNTY does not accept bids for construction contract within 120 days of accepting CONSULTANT's construction drawings, specifications and opinion of probable construction cost, then the CONSULTANT shall not be required to make changes at no additional cost to the COUNTY, and shall not be subject to a claim of delay of project by COUNTY. In

1 such event, the COUNTY may request from the CONSULTANT an update to  
2 the opinion of probable construction cost based on then-current  
3 construction cost parameters, and such request will be compensated  
4 as an Extra Service.

5 E. Phase 5, Construction Observation:

6 The CONSULTANT shall: [*, for each project:*]

7 1. Attend the preconstruction conference scheduled by the  
8 COUNTY.

9 2. Provide construction observation as follows:

10 a. Make recommendations to the COUNTY on all claims  
11 of the COUNTY or construction contractor (hereinafter called  
12 "CONTRACTOR") and all other matters relating to the execution and  
13 progress of work, including interpretation of the CONSULTANT's  
14 contract documents.

15 b. Except for color boards, within seven (7) working  
16 days of COUNTY's request, review and make recommendations for  
17 samples, schedules, shop drawings, and other submissions for  
18 general conformance with the design concept of the project and for  
19 general compliance with the plans and specifications and  
20 information given by the CONSULTANT's contract documents.

21 c. Within two (2) working days, respond timely to  
22 requests from the COUNTY and CONTRACTOR for information needed from  
23 CONSULTANT in order to clarify construction plans and  
24 specifications to review CONTRACTOR's cost estimates for all change  
25 orders.

26 [*alternate*]

27 c. Within two (2) working days of COUNTY's request  
28 for information (RFI), respond to the COUNTY Construction Engineer  
or CONTRACTOR, through the COUNTY Construction Engineer, with  
information and/or drawings needed from CONSULTANT in order to  
clarify the intent of the construction contract plans and  
specifications of the project. CONSULTANT shall review  
CONTRACTOR's cost proposals for all change orders associated with

any additional work as may be necessitated by the RFI clarification.

///

[alternate]

d. Recommend and assist in the preparation of such change orders as are deemed necessary, with supporting documentation, calculations and opinion of probable construction cost, for review and issuance of change orders by the COUNTY Construction Engineer to obtain appropriate agency acceptance and approval. Where the change order arises as a result of a negligent error or omission of the CONSULTANT, the CONSULTANT shall not be compensated as an Extra Service for time spent or cost incurred in efforts connected with the correction thereof. Any changes to the construction contract shall be made only with written COUNTY approval.

[alternate]

d. Recommend and assist in the preparation of such change orders as are deemed necessary, with supporting documentation, calculations and opinion of probable construction cost, for review and issuance of change orders by the COUNTY Construction Engineer to obtain appropriate agency acceptance and approval.

1. Provide drawings and work necessary to delineate the COUNTY's changes in scope of the construction contract or to make modifications as directed by the Board of Supervisors, which shall be made as directed by the Construction Engineer and shall be compensated as an Extra Service.

2. Notwithstanding the foregoing, where the change order arises as a result of a negligent error or omission of the CONSULTANT, the CONSULTANT shall not be compensated as an Extra Service for time spent or cost incurred in efforts connected with the correction thereof. The costs of rework of installed work

1 shall be assessed upon and deducted from the CONSULTANT's contract  
2 payments.

3 3. Any changes to the construction contract shall  
4 be made only with written COUNTY approval.

5 [alternate]

6 d. Recommend and prepare such change orders as are  
7 deemed necessary, and opinion of probable construction cost. Where  
8 the change order arises as a result of a negligent error or  
9 omission of the CONSULTANT, the CONSULTANT shall not be compensated  
10 as an Extra Service for time spent or cost incurred in efforts  
11 connected with the correction thereof. Any changes to the  
12 construction contract shall be made only with written COUNTY  
13 approval.

14 3. Assist COUNTY, at COUNTY's express, written  
15 authorization, with any claim resolution process involving  
16 CONTRACTOR and COUNTY as specified hereunder, including serving as  
17 a witness in connection with any public hearings or legal  
18 proceeding, including dispute resolutions required by law or  
19 hereunder. The parties recognize that this clause is provided as a  
20 means of expediting resolution of claims among the CONTRACTOR,  
21 COUNTY, and CONSULTANT. However, it is understood the CONTRACTOR  
22 is not an intended third party beneficiary of this clause.  
23 Compensation for these services under this paragraph, number  
24 III.F.3, shall be provided under the Extra Services provisions  
25 under Article V. Section C. of this Agreement and shall be computed  
26 and invoiced at hourly rates, not to exceed CONSULTANT's normal and  
27 customary hourly rates for such services, to be negotiated with  
28 COUNTY at the time COUNTY authorizes these services, subject to the  
following:

a. COUNTY may believe that CONSULTANT's work under  
this Agreement is connected with negligent errors, or omissions, or  
problems related to a claim. As a result and upon notice of same  
by COUNTY, CONSULTANT's payment request for such Extra Services

1 shall be held in suspense by COUNTY until final determination is  
2 made, either in accordance with Article IX ("Errors or Omissions  
3 Claims and Disputes") of this Agreement or by a court of law, of  
4 the proportion that CONSULTANT's fault bears to the fault of all  
other parties concerned.

5 b. Such amounts held in suspense shall not be paid to  
6 CONSULTANT, pending the final determination as to the CONSULTANT's  
7 proportional fault. However, the appropriate percentage of such  
8 amount held in suspense shall be paid to CONSULTANT, once a final  
9 determination has been made, whether pursuant to Article IX  
10 ("Errors or Omissions Claims and Disputes") of this Agreement or by  
11 a court of law, when CONSULTANT thereafter submits a proper invoice  
12 to COUNTY Department of Public Works, which then shall have a  
13 maximum of five (5) working days to evaluate and approve the  
14 invoice before submitting it to the COUNTY  
15 Auditor-Controller/Treasurer-Tax Collector, who then shall have an  
additional forty (40) calendar days from receipt of invoice to  
issue payment.

16 4. At intervals appropriate to the stage of construction,  
17 or as otherwise deemed necessary by CONSULTANT, visit the site of  
18 the project as necessary to become familiar generally with the  
19 progress and quality of the work and to determine that the work is  
20 proceeding in general accordance with the contract documents.  
21 CONSULTANT shall not be required to make exhaustive or continuous  
22 on-site inspections but shall give direction to the Construction  
23 Inspector as hereinafter more specifically provided. CONSULTANT  
24 shall not be responsible for the CONTRACTOR's failure to carry out  
25 the construction work in accordance with the contract documents,  
26 however, CONSULTANT shall immediately advise the COUNTY  
Representative of any known or observed deviation from the contract  
documents.

27 *[ add to 4. if appropriate ]*  
28

CONSULTANT shall not have control over or charge of, and shall not be responsible for construction means, methods, techniques, sequence, or procedure, or for the safety precautions, programs, or equipment in use in connection with the work, since these are solely the CONTRACTOR's responsibility under the contract for construction.

5. Based on the CONSULTANT's visits to the site, CONSULTANT shall keep the COUNTY informed through written reports as to the progress of the work, shall endeavor to advise the COUNTY of defects and deficiencies observed in the work of contractors, and may recommend that the COUNTY reject work as failing to conform to the contract documents.

*[Following para applies to major const projects only]*

6. Based upon his/her observations of the progress of construction and the CONTRACTOR's application for payment, and the Construction Inspector's recommendation, he or she shall determine, on a monthly basis, the amount owing to the CONTRACTOR under the contract documents and shall recommend, through appropriate certificates, payments on such amounts. Such certificates shall constitute a representation to the COUNTY that the work has progressed to the point indicated and that to the best of the CONSULTANT's knowledge, information and belief, the quality of the work is in accordance with the contract documents.

7. Conduct site visits which shall include but not be limited to on-site observations to determine the dates of substantial completion, if any, and final completion and to recommend to the COUNTY its acceptance of the work, for the filing of the notice of completion and issuance of final certificate for payment.

8. Submit to COUNTY "verification" and "change order" forms required by OSHPD during construction.

1           9. Conduct a "project shakedown" and staff orientation  
2 for the completed project. [ each completed project to the extent  
3 defined for each project.]

4           [ this Phase if consultant inspects: coord w/ Obs, Comp ]]

5           III. Phase , Construction Inspection

6           1. COUNTY may not have sufficient staff available at the  
7 time of construction to provide onsite construction inspection or  
8 construction testing required to ensure the CONTRACTOR's compliance  
9 with construction plans and specifications [on one or more of the  
10 projects]. In such event, at the sole option of COUNTY, and upon  
11 written authorization and direction as to scope of services,  
12 CONSULTANT may be required to perform construction inspection and  
13 construction testing services for the project. [one or more of the  
14 projects.] It is understood that COUNTY may delete any or all of  
15 construction inspection and construction testing from CONSULTANT's  
16 services at any time prior to award of the construction contract  
17 and perform the construction inspection and testing with its own  
18 forces.

19           2. Upon request by COUNTY pursuant to the preceding  
20 paragraph III.\_.1. [Construction Inspection Phase], the CONSULTANT  
21 shall:

22           a. Provide an Inspector Of Record (IOR) who will  
23 provide full time or part time inspection of the project(s), as  
24 agreed in writing by the CONSULTANT and the COUNTY. The IOR shall  
25 be completely familiar with the project plans and specifications  
26 and knowledgeable and experienced in the type of construction  
27 involved.

28           b. Provide all required quality control testing  
required during construction. The testing shall be performed by a  
qualified, certified testing laboratory.

          c. Based upon his/her observations of the progress of  
construction and a review of the CONTRACTOR's application for  
payment, and the IOR's recommendation, determine on a monthly

1 basis, the amount owing to the CONTRACTOR under the contract  
2 documents and provide his/her recommendations, through appropriate  
3 certificates, that the COUNTY make payments in such amounts as  
4 he/she determines to be owed. Such certificates shall constitute a  
5 representation to the COUNTY that the work has progressed to the  
6 point indicated and that to the best of the CONSULTANT's knowledge,  
7 information and belief, the quality of the work is in accordance  
8 with the contract documents.

9 F. Phase 6, Post-Construction Services:

10 The CONSULTANT shall:

11 1. Review and forward to COUNTY Construction Engineer two  
12 (2) copies of Operations and Maintenance Manuals to be furnished by  
13 the CONTRACTOR. While the CONSULTANT is not responsible for the  
14 technical content of the Operations and Maintenance Manuals,  
15 CONSULTANT shall notify the COUNTY of any deficiencies therein that  
16 would be perceived by an electrical or mechanical engineer  
17 exercising due professional care in his/her reviewing capacity.

18 2. Inform the COUNTY of all written guarantees required  
19 of the CONTRACTOR by the CONSULTANT's technical specifications or  
20 special conditions.

21 3. Require through the construction contract  
22 specifications that record drawings be prepared by the CONTRACTOR  
23 and submitted to the COUNTY for acceptance by the construction  
24 inspector and CONSULTANT. Upon completion of the project, obtain  
25 from the CONTRACTOR all information necessary to document all  
26 changes made to the project, proceed to transfer the CONTRACTOR's  
27 record drawing changes onto the CONSULTANT's original drawings or  
28 .003" mylar (matte one or both sides) reproducibles of the original  
drawings. The complete record drawing set shall remain at all  
times the property of the COUNTY. Changes shall be identified by  
cloud markings and shall identify date of change and its source,  
such as from addenda, change order, or clarification.

//

[ usually added ]

CONSULTANT shall have no responsibility for the accuracy of information provided, either by the CONTRACTOR or by the construction inspector, for transfer to record drawings.

4. If construction plans have been prepared with a CAD system, record drawings in the form of .dxf or .dwg files shall be furnished and delivered to Department of Public Works in addition to mylar reproducibles. Such .dxf or .dwg files shall be furnished on either 100MB 'Zip' disks, 3.5" DS/HD disks, or compact disk (CD-ROM).

[ coord with paras in Const Obs ]

5. Participate fully, aligned with and not adverse to the interests of the COUNTY, upon request, in the early settlement discussions of construction claims resolution issues. In the event such participation is requested of CONSULTANT, CONSULTANT shall be paid for such services as provided under the Extra Services provisions of Article V.C. of this Agreement for the time spent in such participation. All provisions of Article III. \_\_\_\_ [Construction Observation Phase, Claims Resolution par] of this Agreement shall apply to CONSULTANT's participation in any early settlement discussions required by this Section. Participation in this process does not preclude the COUNTY's right to make a negligent error and omissions claim against the CONSULTANT.

6. No final payment to the CONSULTANT [for a specific project of the various projects] will be issued until the services of this Phase have been performed and negligent errors, acts and omissions attributed to the CONSULTANT have been resolved.

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IV. COUNTY'S OBLIGATIONS:

The COUNTY will *[for each project]*:

A. Compensate the CONSULTANT as provided in this Agreement.

B. Provide a "COUNTY Representative" who will represent the COUNTY and who will work with the CONSULTANT in carrying out the provisions of this Agreement. The COUNTY Representative will be the COUNTY Design Engineer or COUNTY Capital Project Division Manager through award of the construction contract and the COUNTY Construction Engineer after award of the construction contract and through completion of construction work by the CONTRACTOR. The CONSULTANT shall communicate and coordinate with the COUNTY Representative who will provide the following services:

1. Provide basic design layouts formats for drawing sheets as may be required for each project.

2. Loan or provide copies of any available plans and other documents to the CONSULTANT. Final payment will not be made to CONSULTANT until all loaned documents are either accounted for or returned.

3. Examine documents submitted to the COUNTY by the CONSULTANT and timely render decisions pertaining thereto.

4. Provide communication between the CONSULTANT and COUNTY officials and commissions (including user Department).

5. Provide the CONSULTANT with the form of contract to be entered into between the COUNTY and CONTRACTOR, including the COUNTY's General Conditions, Notice To Contractors calling for bids, Bid Form, and related COUNTY documents.

6. Pay for the reproduction costs of printing the final bidding and construction documents.

7. Retain, when required *[for a particular project]*, an independent testing laboratory to provide necessary soils, structural, chemical, mechanical, electrical or other tests and reports as may be required to assure quality control and construction compliance with the plans and specifications. COUNTY

1 may elect, at its option, to assign this task to CONSULTANT as an  
2 Extra Service under Section V.C.

3 8. Retain, when required [*for a particular project*], an  
4 independent testing organization to provide mechanical, air  
5 balance, electrical or other tests and reports as may be required  
6 to assure quality control and construction compliance with the  
7 plans and specifications. COUNTY may elect, at its option, to  
8 assign this task to CONSULTANT as an Extra Service under Section  
9 V.C.

10 9. Provide a construction inspector to review and accept  
11 CONTRACTOR's record drawings for completeness and forward this set  
12 to CONSULTANT.

13 10. Provide construction contract administration services,  
14 which services shall include, but may not be limited to:

- 15 a. Conducting the pre-construction conference.
- 16 b. Issuing the Notice to Proceed to the CONTRACTOR.
- 17 c. Authorizing and making progress payments.
- 18 d. Authorizing and issuing contract change orders.
- 19 e. Authorizing supplemental fund payments.
- 20 f. Accepting the project and issuing the Notice of  
21 Completion.

22 C. Give reasonably prompt consideration to all matters  
23 submitted by the CONSULTANT for approval to the end that there will  
24 be no substantial delays in the CONSULTANT's program of work. An  
25 approval, authorization or request to the CONSULTANT given by the  
26 COUNTY will be binding upon the COUNTY under the terms of this  
27 Agreement only if it is made in writing and signed on behalf of the  
28 COUNTY by the COUNTY Representative or a designee.

29 D. Employ a Construction Inspector of Record, [*Labor*  
30 *Compliance Official*,] and such assistants as may be required. The  
31 Construction Inspector of Record and his/her assistants shall have  
32 the right to monitor every part of the construction work by  
33 personally inspecting the same. The Construction Inspector of

Record will work with the CONSULTANT and will immediately call to the attention of the CONSULTANT and COUNTY Representative in writing all inconsistencies or other errors in the plans and specifications or departure therefrom in the work. In case of the Construction Inspector of Record's doubt as to the proper interpretation of plans and specifications, the Construction Inspector of Record shall obtain the CONSULTANT's interpretation thereof. The CONSULTANT shall communicate to the CONTRACTOR only through the COUNTY.

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V. COMPENSATION:

A. Total Fee:

1. Notwithstanding any other provisions in this Agreement, the Total Fee (Basic Fee and Extra Services Allocation) for the services required under this Agreement shall be the total sum of \$\_\_\_\_\_, which shall be computed at the hourly and cost rates shown in Exhibit \_\_\_, attached hereto and incorporated herein.

2. The rates listed herein are to remain in effect for the duration of this Agreement. However, rates may be renegotiated annually at CONSULTANT's request if this Agreement is in effect longer than one (1) year.

B. Basic Fee:

1. Notwithstanding any other provisions in this Agreement, the Basic Fee for the services required under Article III shall not exceed the total sum of \$\_\_\_\_\_. The Basic Fee shall be divided for purposes of payment scheduling, both to a maximum Basic Fee for a specific project, agreed to by the CONSULTANT and the COUNTY Representative, and to a percentage for each phase of a specific project. Such agreed maximum Basic Fee and percentages shall be specified in writing by COUNTY Representative prior to CONSULTANT beginning each project. Unless otherwise agreed to by the CONSULTANT and COUNTY Representative, for fully developed projects the limitations on payment shall be:

Phase 1-Preliminary Design; not to exceed 35%

Phase 2-Construction Documents; not to exceed 45%

Phase 3-Construction Observation; not to exceed 20%

2. For Article III services on a project which do not constitute an entire phase under Article III hereof, such as scoping and estimating costs for advance planning of future projects, such services shall be invoiced monthly based on hourly costs not to exceed written maximum cost limits, as mutually agreed to in writing between CONSULTANT and COUNTY Representative.

1 3. All expenses incidental to CONSULTANT's performance of  
2 services under Article III of this Agreement shall be borne by  
3 CONSULTANT. Incidental expenses include, but may not be limited  
4 to, transportation and travel, postage and courier services, photo  
5 and duplicating services, telephone and facsimile charges, computer  
6 storage media, drawing and plotting media, printing of "check  
7 print" plans and plan sets and documents specifically required by  
8 the provisions of Article III. of this Agreement.

9 C. Extra Services:

10 1. There will be an additional maximum allocation of  
11 \$\_\_\_\_\_ to pay for authorized Extra Services. Payment of Extra  
12 Services in excess of \$\_\_\_\_\_ is unauthorized and can only be  
13 made pursuant to a prior written amendment to this Agreement when  
14 the total of the Basic Fee and Extra Services allocation would  
15 thereby be exceeded. The COUNTY Representative shall have the  
16 discretion to adjust in writing the Basic fee and Extra Services  
17 limits as long as the total Agreement amount of \$\_\_\_\_\_ is not  
18 exceeded.

19 2. The CONSULTANT shall not undertake any Extra Services  
20 without the advance written authorization of the COUNTY  
21 Representative. The CONSULTANT and the COUNTY shall expressly  
22 confirm in writing the authorization and maximum cost for any such  
23 services before the CONSULTANT is compensated for any work thereon.  
24 CONSULTANT shall not add markup percentages or costs to  
25 subconsultant's costs or incidental costs unless expressly  
26 authorized in writing by the COUNTY.

27 3. Except for Extra Services performed under subsection  
28 V.C.4.a., payment for Extra Services will be at the identical  
hourly and cost rates set forth in Exhibit \_\_\_\_.

4. The following are consultant services which are  
considered as not included in Article III herein, but may be  
required as Extra Services.

1           a. Providing construction observation services when  
2 construction exceeds sixty (60) days beyond the original  
3 construction contract schedule as adjusted for weather delays and  
4 as adjusted for delays by CONSULTANT-caused change orders,  
negligent errors, or omissions.

5           b. Conveying or transmitting construction documents  
6 for [agency] approval when the CONSULTANT is granted prior  
7 authorization by the COUNTY.

8           c. Making changes to documents which are ordered by  
9 the COUNTY subsequent to COUNTY approval thereof.

10          d. Preparing change orders when the project scope is  
11 changed on the basis of COUNTY-initiated requests, and such changes  
12 are not a result of negligent errors, acts, or omissions by the  
CONSULTANT.

13          e. If necessary, advising and assisting the COUNTY  
14 with respect to any settlement or litigation arising out of any  
15 failure of the CONTRACTOR to fully perform the construction  
contract in accordance with the contract documents.

16          f. Performing a visual inspection, within one year  
17 following the date of substantial completion (if requested by the  
18 COUNTY [on any project]), and reporting in writing on detectable  
19 defects in workmanship or material.

20          g. Providing site surveys and soil investigations.

21          h. Providing unforeseen, extraordinary, or unique  
22 services or items not covered nor normally included in the Basic  
Fee, but authorized by the COUNTY Representative.

23          j. If requested by COUNTY, as provided for in Article  
24 IV.\_\_\_\_, to retain, when required [for a particular project], an  
25 independent testing laboratory to provide necessary soils,  
26 chemical, structural, mechanical, electrical or other tests and  
27 reports as may be necessary to assure quality control and  
28 construction compliance with the plans and specifications.

1 k. If requested by the COUNTY, as provided for in  
2 Article IV to retain, when required *[for a particular project]*, a  
3 specialized independent testing organization to provide mechanical,  
4 air balance, electrical or other tests and reports as may be  
5 required to assure quality control and construction compliance with  
6 the plans and specifications.

7 1. Providing those items under Article III which are  
8 identified as Extra Services.

9 5. If the CONSULTANT becomes aware of potential  
10 unforeseen expenses that would not be covered by the Basic Fee of  
11 this Agreement or for Extra Services as delineated in this Article  
12 V., Section C., CONSULTANT shall inform the COUNTY of the extent  
13 and nature of such expenses or services. Upon mutual agreement of  
14 the CONSULTANT and the COUNTY, this Agreement may be amended in  
15 writing to cover such unforeseen expense or cost of Extra Service.

16 6. In the event the COUNTY Representative expressly  
17 authorizes Extra Services, CONSULTANT shall keep complete records  
18 showing the hours and description of activities worked by each  
19 person who works on the project and all costs and charges  
20 applicable to the Extra Services work authorized. Should there be  
21 a claim for Extra Services, the CONSULTANT understands and agrees  
22 that he or she must specifically identify the activity, performer  
23 of the activity, reason for the activity, and COUNTY official  
24 requesting the activity, or the claim will be denied. CONSULTANT  
25 shall be responsible for all subconsultants keeping similar  
26 records. The CONSULTANT shall not stop the work, including the  
27 design in other areas unrelated to the Extra Services request or  
28 claim, unless it can be shown the project design cannot proceed  
while a claim or request for Extra Services is being evaluated.

26 D. Payments:

27 1. Progress payments will be made by the COUNTY upon  
28 receipt of the CONSULTANT's monthly invoices and approval by COUNTY  
thereof, based on the COUNTY's evaluation of the completion of the

1        respective components of the projects(s). Invoices shall clearly  
2        identify and shall be submitted with the documentation identified  
3        in paragraph V.D.5. below. CONSULTANT shall submit separate  
4        invoices for Extra Services, accompanied with copies of any  
5        subconsultant's invoices and costs for approved incidentals.  
6        Invoices shall be forwarded to:

7                                Name, Title  
8                                Fresno County Department of Public Works  
9                                2220 Tulare Street, Suite 608  
10                                Fresno, CA 93721-2106

11                2. Upon receipt of a proper invoice, the COUNTY  
12        Department of Public Works will take a maximum of five (5) working  
13        days to review, approve, and submit it to the COUNTY  
14        Auditor-Controller/Treasurer-Tax Collector. Unsatisfactory or  
15        inaccurate invoices will be returned to the CONSULTANT for  
16        correction and resubmittal. Payment, less retention, will be  
17        issued to CONSULTANT within forty (40) calendar days of the date  
18        the Auditor-Controller/Treasurer-Tax Collector receives the  
19        approved invoice.

20                3. COUNTY is entitled to and shall withhold a ten percent  
21        (10%) retention from the earned compensation in accordance with the  
22        provisions of Article VII of this Agreement.

23                4. An unresolved dispute over a possible negligent error  
24        or omission may cause payment of CONSULTANT fees in the disputed  
25        amount to be withheld by the COUNTY.

26                5. Concurrently with the invoices, the CONSULTANT shall  
27        provide its certification acceptable to the COUNTY, and shall  
28        provide, on COUNTY request, copies of issued checks, receipts, or  
29        other COUNTY pre-approved documentation, that complete payment,  
30        less a ten percent (10%) retention, has been made by CONSULTANT to  
31        all subconsultants as provided herein for all previous invoices  
32        paid by the COUNTY, and that CONSULTANT has complied with state  
33        wage and work hour laws and regulations. However, the parties do

1 not intend that the foregoing creates in any subconsultant or  
2 subcontractor a third party beneficiary status or third party  
3 beneficiary rights, and expressly disclaim any such status or  
rights.

4 6. Final invoice, and separate invoice for retentions,  
5 shall be submitted to COUNTY no later than thirty (30) days after  
6 [a specific project] is completed. The CONSULTANT shall provide  
7 its certification acceptable to the COUNTY, on COUNTY request, that  
8 all subconsultants have received full payment for services rendered  
9 and work performed on the project. Payment for retentions shall  
10 not be made until all post-construction services are completed in  
11 accordance with the provisions of Article III, Section \_\_\_\_ (*Post*  
12 *Construction*) of this Agreement, including but not limited to  
record drawings approval, operation and maintenance manual review,  
13 and furnishing of required reports.

14 7. In the event the COUNTY reduces the scope of the  
15 project, the CONSULTANT will be compensated on a pro rata basis for  
16 actual work completed and accepted by the COUNTY in accordance with  
the terms of this Agreement.

17 VI. COMPENSATION RECORDS

18 The CONSULTANT shall keep complete records showing the hours  
19 and description of activities performed by each person who works on  
20 the project and all associated costs or charges applicable to work  
21 covered by the Basic Fee and approved Extra Services. The  
22 CONSULTANT will be responsible for all sub-consultants keeping  
similar records.

23 VII. RETENTION FROM EARNED COMPENSATION:

24 A. In addition to any amounts withheld under Article III.  
25 Section \_\_\_\_.[*Const Observation Phase*], COUNTY is entitled to and  
26 shall withhold a ten percent (10%) retention from the earned  
27 compensation of the CONSULTANT. Such retention from earned  
28 compensation may, at the COUNTY'S option, be applied to all phases  
of the consultant services to be provided under this agreement,

1 including those phases completed and Extra Services. *Retention of*  
2 *earned compensation shall be administered on an individual basis*  
3 *for each of the various projects.*

4 C. When the construction contract *[on any project appears to*  
5 *have]* satisfactorily performed to the eighty percent (80%) point of  
6 completion without major pending claims, disputes or other matters  
7 in question between the parties, the COUNTY may, at its discretion,  
8 reduce the retention *[on that project]* from ten percent (10%) to  
9 five percent (5%), and the resulting surplus funds, less any  
10 current-phase or Extra Service retention, will be paid by COUNTY to  
11 CONSULTANT at that time. The final retention of five percent (5%)  
12 will be paid in accordance with the payment provisions of this  
13 Agreement and upon receipt of proper invoice, within forty-five  
14 (45) days after completion of all of CONSULTANT's obligations under  
15 this Agreement, *[hereunder respecting that project]* including the  
16 resolution of all claims and disputes between COUNTY and  
17 CONSULTANT.

18 VIII. AUDITS, ACCOUNTING AND INSPECTIONS ACCESS:

19 A. The CONSULTANT shall establish accounting and bookkeeping  
20 practices including, but not limited to, employee time cards,  
21 payrolls, and other records of transactions to be paid from State  
22 Grant and Federal Grant (HUD/CDBG) funds.

23 B. The CONSULTANT shall at any time during regular business  
24 hours, and as often as the COUNTY may deem necessary, make  
25 available for examination by *[Federal or State authorities, or]*  
26 the COUNTY Auditor-Controller/Treasurer-Tax Collector, or their  
27 authorized representatives, all of CONSULTANT's records and data  
28 with respect to matters covered by this Agreement. The CONSULTANT  
shall permit *[Federal, State, or]* COUNTY authorities to audit and  
inspect all invoices, materials, payrolls, records of personnel,  
conditions of employment, and other data relating to matters  
covered by this Agreement.

1 C. The CONSULTANT shall be subject to the examination and  
2 audit of the Auditor General for a period of three (3) years after  
3 final payment under this Agreement (Government Code Section 8546.7)

4 IX. ERRORS OR OMISSION CLAIMS AND DISPUTES

5 A. Definitions:

6 1. A "Consultant" is a duly licensed Architect or  
7 Engineer, or other provider of professional services, acting as a  
8 business entity (owner, partnership, corporation, joint venture or  
9 other business association) in accordance with the terms of an  
10 Agreement with the COUNTY.

11 2. A "Claim" is a demand or assertion by one of the  
12 parties seeking, as a matter of right, adjustment or interpretation  
13 of contract terms, payment of money, extension of time, change  
14 orders, or other relief with respect to the terms of the contract.  
15 The term "Claim" also includes other disputes and matters in  
16 question between the COUNTY and CONSULTANT arising out of or  
17 relating to the contract. Claims must be made by written notice.  
18 The provisions of Government Code section 901, et seq., shall apply  
19 to every claim made to COUNTY. The responsibility to substantiate  
20 claims shall rest with the party making the claim. The term  
21 "Claim" also includes any allegation of an error or omission by the  
22 CONSULTANT.

23 B. In the spirit of cooperation between the COUNTY and  
24 CONSULTANT, the following procedures are established in the event  
25 of any claim or dispute alleging a negligent error, act, or  
26 omission, of the CONSULTANT.

27 1. Claims, disputes or other matters in question between  
28 the parties, arising out of or relating to this Agreement, shall  
not be subject to arbitration, but shall be subject to the  
following procedures.

2. The project manager of COUNTY and CONSULTANT shall  
meet and confer and attempt to reach agreement on any dispute,  
including what damages have occurred, the measure of damages and

1 what proportion of damages, if any, shall be paid by either party.  
2 The parties agree to consult and consider the use of mediation or  
3 other form of dispute resolution prior to resorting to litigation.

4 3. If the COUNTY and CONSULTANT cannot reach agreement  
5 under the immediately preceding paragraph IX.B.2., the disputed  
6 issues may, upon concurrence by all parties, be submitted to a  
7 panel of three (3) for a recommended resolution. The CONSULTANT  
8 and the COUNTY shall each select one (1) member of the panel, and  
9 the third member shall be selected by the other two panel members.  
10 The discovery rights provided by California Code of Civil Procedure  
11 for civil proceedings shall be available and enforceable to resolve  
12 the disputed issues. Either party requesting this dispute  
13 resolution process shall, when invoking the rights to this panel,  
14 give to the other party a notice describing the claims, disputes  
15 and other matters in question. Prior to 20 days before the initial  
16 meeting of the panel, both parties shall submit all documents such  
17 party intends to rely upon to resolve such dispute. If it is  
18 determined by the panel that any party has relied on such  
19 documentation, but has failed to previously submit such  
20 documentation on a timely basis to the other party, the other party  
21 shall be entitled to a 20-day continuance of such initial meeting  
22 of the panel. The decision by the panel is not a condition  
23 precedent to arbitration, mediation or litigation.

24 4. Upon receipt of the panel's recommended resolution of  
25 the disputed issues, the COUNTY and the CONSULTANT shall again meet  
26 and confer and attempt to reach agreement. If the parties still  
27 are unable to reach agreement, each party shall have recourse to  
28 all appropriate legal and equitable remedies.

C. The procedures to be followed in the resolution of claims  
and disputes may be modified at any time by mutual agreement of the  
parties hereto.

D. The CONSULTANT shall continue to perform its obligations  
under this Agreement pending resolution of any dispute, and the

COUNTY shall continue to make payments of all undisputed amounts due under this Agreement.

E. When a claim by either party has been made alleging the CONSULTANT's negligent error, act, or omission, the COUNTY Project Manager and the CONSULTANT shall meet and confer within twenty-one (21) days after the written notice of the claim has been provided.

X. JOINDER OF PARTIES

The CONSULTANT, the CONSULTANT's consultants of any tier, subcontractors of any tier, suppliers and construction lenders shall all be bound by the dispute resolution provisions of this Agreement, and immediately upon demand of COUNTY or CONSULTANT, shall participate in and shall become parties to the dispute resolution process, provided they have signed any document that incorporates or refers to the dispute resolution provisions of this Agreement. Failure of CONSULTANT, whether intended or inadvertent, to ensure that such nonparties have signed such a document shall inure only to CONSULTANT's detriment, if any there be. COUNTY shall not suffer a detriment by CONSULTANT's action or inaction in this regard. If such a party after due notice fails to appear at and participate in the dispute resolution proceedings, the panel established in accordance with the provisions of paragraph IX.B.3. shall make a decision based on evidence introduced by the party or parties who do participate.

XI. CONSULTANT'S OBLIGATIONS RELATING TO CONSTRUCTION CLAIMS

A. The CONSULTANT will review and analyze construction contract claims and recommend resolution of them as soon as possible following receipt of demand by COUNTY.

B. Within a reasonable time after receipt of a claim, the CONSULTANT shall provide a written analysis of the claim to the COUNTY, signed by the CONSULTANT and any affected sub-consultants. The written analysis shall include the CONSULTANT's professional opinion of the responsibility for payment of the claim, with supporting facts and documentation. A copy of the written analysis

1 shall be provided to the respective insurance adjusters for  
2 CONSULTANT and any affected sub-consultant.

3 C. Upon receipt of a claim, the CONSULTANT may also take one  
4 (1) or more of the following actions, within ten (10) days of  
5 receipt of a claim:

6 1. Request additional supporting data from the claimant,  
7 requiring that such data be supplied within ten (10) days of the  
8 request;

9 2. Submit a schedule to the parties indicating when the  
10 CONSULTANT expects to respond to the claim, which schedule shall  
11 not exceed thirty (30) days from CONSULTANT's original receipt of  
12 the claim;

13 3. Recommend rejection of the claim in whole or in part,  
14 stating the reasons for such rejection;

15 4. Recommend approval of the claim by the other party, or

16 5. Suggest a compromise.

17 D. In every case, CONSULTANT shall provide its recommended  
18 resolution of a claim within thirty (30) days from the original  
19 receipt of claim, unless the CONSULTANT obtains COUNTY's prior  
20 written approval.

## 21 XII. INDEPENDENT CONTRACTOR:

22 A. In performance of the work, duties, and obligations  
23 assumed by CONSULTANT under this Agreement, it is mutually  
24 understood and agreed that CONSULTANT, including any and all of  
25 CONSULTANT's officers, agents and employees, will at all times be  
26 acting and performing as an independent contractor, and shall act  
27 in an independent capacity and not as an officer, agent, servant,  
28 employee, joint venturer, partner or associate of the COUNTY.  
Furthermore, COUNTY shall have no right to control or supervise or  
direct the manner or method by which CONSULTANT shall perform its  
work and function. However, COUNTY shall retain the right to  
administer this Agreement so as to verify that CONSULTANT is  
performing its obligations in accordance with the terms and

conditions thereof. CONSULTANT and COUNTY shall comply with all applicable provisions of law and the rules and regulations, if any, of governmental authorities having jurisdiction over matters the subject thereof.

B. Because of its status as an independent contractor, CONSULTANT shall have absolutely no right to employment rights and benefits available to COUNTY employees. CONSULTANT shall be solely liable and responsible for providing to, or on behalf of its employees all legally-required employee benefits. In addition, CONSULTANT shall be solely responsible and save COUNTY harmless from all matters relating to payment of CONSULTANT's employees, including compliance with Social Security, withholding, and all other regulations governing such matters. It is acknowledged that during the term of this Agreement CONSULTANT may be providing services to others unrelated to the COUNTY or to this Agreement.

XIII. PARTIES BOUND BY AGREEMENT:

This Agreement shall be binding upon the COUNTY, the CONSULTANT, and their successors in interest, legal representatives, executors, administrators, and assigns with respect to all covenants as set forth herein.

XIV. REQUIRED APPROVALS:

It is understood that the CONSULTANT shall not assign, sublet, subcontract, or transfer any of CONSULTANT's rights, duties, or obligations under this Agreement, without the prior express, written consent of the COUNTY. Such consent and approval may be given only by the COUNTY Board of Supervisors.

XV. COMPLIANCE WITH LAWS:

CONSULTANT shall comply with all applicable federal, state, and local laws, ordinances, regulations, and Fresno County Charter Provisions in effect at the time of CONSULTANT's performance of the professional services to be provided hereunder.

*[CDBG Paragraph: CONSULTANT shall also comply with current rules and regulations established pursuant to the federal Housing*

1 and Development Act of 1974 and its amendments including, but not  
2 necessarily limited to, those requirements listed in Exhibit \_\_,  
3 attached hereto and incorporated herein.]

4 XVI. GOVERNING LAW:

5 A. Any controversy or claim arising out of or relating to  
6 this Agreement which cannot be amicably settled without court  
7 action shall be litigated either in a state court for Fresno  
8 County, California, or in the U.S. District Court for the Eastern  
9 District of California, located in Fresno County.

10 B. The rights and obligations of the parties and all  
11 interpretations and performance of this Agreement shall be governed  
12 in all respects by the laws of the State of California.

13 XVII. AMENDMENTS:

14 Any changes to this Agreement requested either by the COUNTY  
15 or CONSULTANT may only be effected if mutually agreed upon in  
16 writing by duly authorized representatives of the parties hereto.  
17 This Agreement shall not be modified or amended, nor shall any  
18 rights of a party hereto be waived, except by such a writing.

19 XVIII. CONSULTANT'S LEGAL AUTHORITY:

20 [FOR CALIFORNIA CORPORATIONS:] Each individual executing  
21 this Agreement on behalf of CONSULTANT hereby covenants, warrants,  
22 and represents: (i) that he or she is duly authorized to execute  
23 and deliver this Agreement on behalf of such corporation in  
24 accordance with a duly adopted resolution of the corporation's  
25 board of directors and in accordance with such corporation's  
26 articles of incorporation or charter and bylaws; (ii) that this  
27 Agreement is binding upon such corporation; and (iii) that  
28 CONSULTANT is a duly organized and legally existing corporation in  
good standing in the State of California.

[FOR CALIFORNIA PARTNERSHIPS:] Each individual executing this  
Agreement on behalf of CONSULTANT hereby covenants, warrants, and  
represents: (i) that he or she is duly authorized to execute and  
deliver this Agreement on behalf of such partnership in accordance

1 with its Partnership Agreement; and (ii) that this Agreement is  
2 binding upon such partnership; and (iii) that CONSULTANT is a duly  
3 organized and legally existing partnership in the State of  
4 California.

5 [FOR OUT OF STATE CORPORATIONS:] Each individual executing  
6 this Agreement on behalf of CONSULTANT hereby covenants, warrants,  
7 and represents: (i) that he or she is duly authorized to execute  
8 and deliver this Agreement on behalf of such corporation in  
9 accordance with a duly adopted resolution of the corporation's  
10 board of directors and in accordance with such corporation's  
11 articles of incorporation or charter and bylaws; (ii) that this  
12 Agreement is binding upon such corporation; (iii) that CONSULTANT  
13 is duly organized and legally existing corporation in good standing  
14 in the State of \_\_\_\_\_, is registered with the California  
15 Secretary of State to do business in the State of California as a  
16 foreign corporation, and; (iv) that each individual executing or  
17 attesting this Agreement on behalf of CONSULTANT hereby covenants,  
18 warrants, and represents:

19 a. That this Agreement is binding upon such  
20 corporation; and

21 b. That CONSULTANT shall deliver to COUNTY all  
22 necessary certificates and assurances indicating CONSULTANT's right  
23 to conduct business in the State of California including but not  
24 limited to certificates filed with the California Secretary of  
25 State to conduct business in California and the name and  
26 California-based address of CONSULTANT's agent for receipt of  
27 service of process.

28 [FOR SOLE PROPRIETOR:] Each individual executing this  
Agreement on behalf of CONSULTANT, a sole proprietor, hereby  
covenants, warrants, and represents: (i) that he or she is duly  
authorized to execute and deliver this Agreement on behalf of such  
sole proprietor; and (ii) that this Agreement is binding upon such  
proprietor.

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A. CONSULTANT shall hold harmless and indemnify COUNTY, its officers, agents, and employees, against the payment of any and all costs and expenses (including reasonable attorney fees and court costs), damages, claims, suits, losses, and liability for bodily and personal injury to or death of any person or for loss of any property resulting from or arising out of any negligent or wrongful acts, errors or omissions of CONSULTANT, its officers, agents, and employees, in performing or failing to perform any work, services, or functions under this Agreement.

9 B. COUNTY and CONSULTANT hereby declare their mutual intent  
10 to cooperate in the defense of any claim, suit, or other action  
11 alleging liability, arising from the negligent performance or  
12 failure to perform of any COUNTY contractor or subcontractor in  
13 connection with the project. Such cooperation may include an  
14 agreement to prepare and present a cooperative defense after  
15 consultation with CONSULTANT's professional liability insurance  
carrier.

16	XX. LIABILITY INSURANCE:
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17           A. Prior to commencing the duties under the Agreement with  
18 the COUNTY, the CONSULTANT shall furnish the COUNTY, at no  
19 additional cost to the COUNTY, certificates for the following  
20 insurance policies which shall be kept in force at all times during  
21 the term of the Agreement (i.e., until the Agreement is terminated  
22 or it expires), and for such additional time as may be specified  
herein with respect to a particular type of policy.

23                   1. Commercial General Liability Insurance or  
24 Comprehensive General Liability Insurance, naming the COUNTY as an  
25 additional insured, with limits of not less than \$1,000,000 per  
occurrence.

2. Comprehensive Automobile Liability Insurance with  
limits for bodily injury of not less than \$250,000 per person,

1 \$500,000 per accident and for property damages of not less than  
2 \$50,000, or such coverage with a combined single limit of \$500,000.

3 3. Worker's Compensation insurance policy as required by  
4 the California Labor Code.

5 4. Professional Liability Insurance:

6 a. In the minimum amount of at least \$1,000,000  
7 coverage per claim, with an annual aggregate of at least  
8 \$1,000,000, and with a deductible not to exceed \$50,000. A  
9 deductible greater than \$50,000 will be accepted upon the COUNTY  
10 receiving satisfactory, certified information of the CONSULTANT's  
11 ability to support such a deductible. The financial ability to  
12 support the difference between the \$50,000 and greater deductible  
13 amount requested by CONSULTANT shall be guaranteed by any of the  
14 following:

15 1. Cash deposit with a trustee bank.

16 2. Irrevocable letter of credit issued by a bank  
17 for a period sufficient for the COUNTY to determine if there is a  
18 claim to be made against the CONSULTANT, e.g. six months after  
19 termination of Agreement.

20 3. Withholding payment under terms of the  
21 Agreement for the same period as under Article VII. herein.

22 b. CONSULTANT and subconsultants shall make full  
23 disclosure, in writing to the COUNTY, of all pending and open  
24 claims and disputes during the course of this Agreement that affect  
25 the specified aggregate limits of the Professional Liability  
26 Insurance policy.

27 c. Professional Liability Insurance (policy or  
28 endorsement to practice professional liability insurance) shall  
extend for a minimum of two (2) years past the date of final  
payment to CONSULTANT, including the resolution of all claims,  
disputes, and matters in question regarding the project.

d. In the event that CONSULTANT voluntarily changes,  
or involuntarily changes, due to circumstances beyond its control,

1 its Professional Liability Insurance policy carrier during the  
2 period such coverage is required to be in force (as specified in  
3 the immediately preceding subparagraph XX.A.4.c), such new policy  
4 shall include prior acts coverage retroactive, at least, to the  
5 date of execution of this Agreement. CONSULTANT may, at its option  
6 and expense, purchase supplemental or "tail" coverage from the  
7 former policy carrier, negotiate a retroactive reporting date with  
8 the new policy carrier for claims incurred but not reported as of  
9 the date of change in policy carrier, and shall in any event  
10 maintain Professional Liability Insurance in a manner that provides  
11 continuous coverage to the COUNTY throughout the term of this  
12 Agreement, and for a period of two (2) years past the issuance of  
13 final payment to the CONSULTANT.

12 B. All policies shall be with admitted insurers licensed to  
13 do business in the State of California. CONSULTANT shall give  
14 COUNTY at least thirty (30) days written advance notice of any  
15 expiration, cancellation or reduction in the coverage of any of the  
16 aforesaid policies.

16 C. The COUNTY, its officers, agents and employees,  
17 individually and collectively, shall be named as an additional  
18 insured under the policy for Commercial General Liability Insurance  
19 or Comprehensive General Liability Insurance, but only insofar as  
20 the operations under this Agreement are concerned. Such coverage  
21 of COUNTY as additional insured shall apply as primary insurance  
22 and any other insurance, or self-insurance, maintained by the  
23 COUNTY, its officers, agents, and employees, shall be excess only  
24 and not contributing with insurance provided under the CONSULTANT's  
25 policies herein.

25 D. In the event CONSULTANT fails to keep in effect at all  
26 times insurance coverage as herein provided, the COUNTY may, in  
27 addition to other remedies it may have, suspend or terminate this  
28 Agreement upon the occurrence of such event.

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XXI. OWNERSHIP OF DOCUMENTS:

1           A. CONSULTANT understands and agrees that COUNTY shall retain  
2 full ownership rights of the drawings and the work-product of  
3 CONSULTANT for each project, to the fullest extent permitted by  
4 law. In this regard, CONSULTANT acknowledges and agrees that  
5 CONSULTANT's services are on behalf of COUNTY and are "works made  
6 for hire," as that term is defined in copyright law, by COUNTY;  
7 that the drawings and work-product to be prepared by CONSULTANT are  
8 for the sole and exclusive use of COUNTY, and shall be the sole  
9 property of COUNTY and its assigns, and the COUNTY and its assigns  
10 shall be the sole owner of all patents, copyrights, trademarks,  
11 trade secrets and other contractual and intangible rights of any  
12 kind or nature in connection therewith; that all the contractual or  
13 intangible rights of any kind or nature, title, and interest in and  
14 to the drawings and work-product will be transferred to COUNTY by  
15 CONSULTANT, and CONSULTANT will assist COUNTY to obtain and enforce  
16 patents, copyrights, trademarks, trade secrets, and other  
17 contractual and intangible rights of any kind or nature relating to  
18 said drawings and work-product; that COUNTY shall be and become the  
19 owner of such drawings and work product, free and clear of any  
20 claim by CONSULTANT or anyone claiming any right through  
21 CONSULTANT. CONSULTANT further acknowledges and agrees that  
22 COUNTY's ownership rights in such drawings and work product shall  
23 apply regardless of whether such drawings or work product, or any  
24 copies thereof, are in the possession of CONSULTANT, or any other  
25 person, firm, corporation, or entity. For the purpose of this  
26 Agreement the terms "drawings and work-product" shall mean all  
27 reports and study findings commissioned to develop the design of  
28 each project, drawings and schematic or preliminary design  
documents of each project, certified reproducibles of the original  
final construction contract drawings of each project,  
specifications of each project, the approved opinion of probable  
construction cost of [each] project, record drawings of each

1 project, as-built plans of [each] project, and discoveries,  
2 developments, designs, improvements, inventions, formulas,  
3 processes, techniques, or specific know-how and data generated or  
4 conceived or reduced to practice or learning by CONSULTANT, either  
5 alone or jointly with others, that result from the tasks assigned  
6 to CONSULTANT by COUNTY under this Agreement.

7 B. If the Agreement is terminated during or at the completion  
8 of the preliminary design phase under Article III, a reproducible  
9 copy of the preliminary design documents shall be submitted by  
10 CONSULTANT to the COUNTY, which may use them to complete [each]  
11 project in future phases.

12 C. If each project is terminated at the completion of the  
13 construction document phase of any project, certified reproducible  
14 on .003" mylars of the original final construction contract  
15 drawings, specifications, and approved opinion of probable  
16 construction cost shall be submitted by CONSULTANT to COUNTY.

17 D. Documents, including drawings and specifications, prepared  
18 by CONSULTANT for any project pursuant to this Agreement are not  
19 intended or represented to be suitable for reuse by COUNTY or  
20 others on extensions of the services provided for that project or  
21 any other project. Any use of completed documents for other  
22 projects and/or any use of uncompleted documents will be at  
23 COUNTY's sole risk and without liability or legal exposure to  
24 CONSULTANT.

25 E. COUNTY has requested that certain machine-readable  
26 information and data ("CAD data") be provided by CONSULTANT for any  
27 project under this Agreement. Such CAD data is more specifically  
28 described in Article III. CONSULTANT shall not be liable for  
claims, liabilities or losses arising out of, or connected with (1)  
the modification or misuse by COUNTY, or anyone authorized by  
COUNTY, of such CAD data; or (2) decline of accuracy or readability  
of CAD data due to inappropriate storage conditions or duration; or  
(3) any use by COUNTY, or anyone authorized by COUNTY, of such CAD

data for additions to any such project or for the completion of any such project by others, or for other projects.

XXII. TIME OF COMPLETION:

A. Upon request of the COUNTY Representative, the CONSULTANT shall submit for the COUNTY Representative's approval, schedules for the performance of the CONSULTANT's services which may be adjusted as the projects proceed, and shall include allowances for periods of time required for the COUNTY's review and approval of submissions by authorities having jurisdiction over the projects. Time limits established by these schedules approved by COUNTY Representative shall not, except as provided herein in this Agreement, be exceeded by the CONSULTANT.

B. CONSULTANT shall diligently proceed with the agreed scope of services and shall provide such services in a timely manner. Failure of the CONSULTANT to meet any deadline listed in the above-referenced schedule once such failure exceeds seven (7) calendar days past the specified completion date (unless the delay is attributable to the COUNTY or State), is sufficient cause to immediately terminate this Agreement, at the option of the COUNTY, in accordance with Article XXIII.

C. CONSULTANT shall complete all services required under this Agreement and this Agreement shall expire on \_\_\_\_\_, 20\_\_\_\_, unless it is extended in writing by the Director of the Department of Public Works or his/her designee, or it is earlier terminated in accordance with the provisions of Article XXIII.

D. Time is of the essence in the completion of the services covered by this Agreement. Failure of the CONSULTANT to meet any specific date in the above-referenced schedule, once such failure exceeds seven (7) calendar days past the specified completion date (unless the delay is attributable to the COUNTY or State), is sufficient cause to immediately terminate this Agreement at the option of the COUNTY in accordance with Article XXIII.C.

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XXIII. TERMINATION OF AGREEMENT:

A. This Agreement may be terminated without cause at any time by the COUNTY upon thirty (30) calendar days written notice. If the COUNTY terminates this Agreement, the CONSULTANT shall be compensated for services satisfactorily completed to the date of termination based upon the compensation rates and subject to the maximum amounts payable agreed to in Article V, together with such additional services satisfactorily performed after termination which are expressly authorized by the COUNTY Representative in order to conclude the work performed to date of termination.

B. If the CONSULTANT terminates the Agreement for reasons other than material breach by the COUNTY, the CONSULTANT shall reimburse the COUNTY, up to a maximum of \$5,000 for the actual expense of issuing a Request For Proposal (RFP), engaging a new CONSULTANT, and the new CONSULTANT's cost in becoming familiar with the previous CONSULTANT's design.

C. The COUNTY may immediately suspend or terminate this Agreement in whole or in part, where in the determination of the COUNTY there is:

1. An illegal or improper use of funds;
2. A failure to comply with any term of this Agreement;
3. A substantially incorrect or incomplete report submitted to the COUNTY;
4. Improperly performed service.

D. In no event shall any payment by the COUNTY constitute a waiver by the COUNTY of any breach of this Agreement or any default which may then exist on the part of the CONSULTANT. Neither shall such payment impair or prejudice any remedy available to the COUNTY with respect to the breach or default. The COUNTY shall have the right to demand of the CONSULTANT the repayment to the COUNTY of any funds disbursed to the CONSULTANT under this Agreement, which, in the judgment of the COUNTY and as determined in accordance with the procedures of Article IX

1 ("Errors or Omissions Claims and Disputes"), were not expended in  
2 accordance with the terms of this Agreement. The CONSULTANT shall  
3 promptly refund any such funds upon demand.

4 E. The terms of this Agreement, and the services to be  
5 provided thereunder, are contingent on the approval of funds by the  
6 appropriating government agency. Should sufficient funds not be  
7 allocated, the services provided may be modified, or this Agreement  
8 terminated at any time by giving the CONSULTANT thirty (30) days  
9 advance written notice.

10 XXIV. CONFLICT OF INTEREST:

11 The CONSULTANT shall comply with the provisions of the Fresno  
12 County Department of Public Works Conflict of Interest Code,  
13 attached hereto as Exhibit \_\_\_\_ and incorporated herein. Such  
14 compliance shall include the filing of annual statements pursuant  
15 to the regulations of the State Fair Political Practices  
16 Commission.

17 XXV. ENTIRE AGREEMENT:

18 This Agreement constitutes the entire agreement between the  
19 COUNTY and the CONSULTANT with respect to the subject matter hereof  
20 and supersedes all previous negotiations, proposals, commitments,  
21 writings, advertisements, publications, and understandings of any  
22 nature whatsoever unless expressly included in this Agreement.

23 XXVI. SEVERABILITY:

24 Should any provision herein be found or deemed to be invalid,  
25 this Agreement shall be construed as not containing such provision,  
26 and all other provisions which are otherwise lawful shall remain in  
27 full force and effect, and to this end the provisions of this  
28 Agreement are hereby declared to be severable.

1       IN WITNESS WHEREOF, the parties hereto have caused this  
2 Agreement to be executed as of the day and year first above  
3 written.

4       **NAME of FIRM**

**COUNTY OF FRESNO**

7 BY: \_\_\_\_\_

BY: \_\_\_\_\_

CHAIRMAN, BOARD OF SUPERVISORS

8 TITLE: \_\_\_\_\_

9 ADDRESS: \_\_\_\_\_

APPROVED AS TO LEGAL FORM

PHILLIP S. CRONIN, COUNTY COUNSEL

10 \_\_\_\_\_  
11  
12 PHONE / FAX \_\_\_\_\_

BY: \_\_\_\_\_

13 FEDERAL ID NO.

14  
15 REVIEWED AND RECOMMENDED FOR  
16 APPROVAL

APPROVED AS TO ACCOUNTING FORM

17  
18 BY: \_\_\_\_\_

BY: \_\_\_\_\_

19 RICHARD L. BROGAN, DIRECTOR  
DEPARTMENT OF PUBLIC WORKS

AUDITOR-CONTROLLER/  
TREASURER-TAX COLLECTOR

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